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against Racism and Intolerance

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# **ECRI REPORT ON THE NETHERLANDS**

**(fifth monitoring cycle)**

Adopted on 2 April 2019

Published on 4 June 2019

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 5 December 2018; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on the Netherlands on 20 June 2013, progress has been made in a number of fields.**

A process is under way to include further discrimination grounds in the Constitution, and the second chamber of the Dutch Parliament adopted an amendment to the General Equal Treatment Act (AWGB) stating explicitly that discrimination on the ground of sex also covers a person's sexual characteristics, gender identity and gender expression.

A new National Anti-Discrimination Programme was adopted in 2016 and the 2017 coalition agreement clearly states that there is no room for hate speech. Leading politicians have publicly condemned hate speech and promote wide media coverage of the annual commemorations of the abolition of slavery. At school, equality and tolerance are mandatory parts of civic education.

The police have compiled standard sets of questions for investigating hate speech, the prosecution has carried through several strategic hate crime cases, and both co-operate with the local anti-discrimination bureaus (ADVs). The police have worked on avoiding racial profiling and enacted an operational framework for proactive controls. The Royal Dutch Football Association co-operates with minority groups to tackle offensive chants in stadiums and has enacted rules on how to respond to such incidents.

Municipalities have invested in intense integration programmes for newcomers; the national authorities are also revising their integration policies and intensifying assistance to newcomers. The school results of children with a migration background and Antillean children have significantly improved. The authorities focus on discrimination in the labour market and have taken efficient measures to remove exploiting temporary work agencies from the market. Many private companies and public authorities are implementing Diversity Charters. There are biannual reports on the situation of Roma and the authorities have discontinued their policy of reducing the number of camp sites where Roma traditionally live.

Attitudes towards LGBT persons continued to improve and the 2018 emancipation memorandum contains a set of measures for promoting equality of LGBTI persons. The authorities are considering further easing the conditions for the change of name and gender of transgender persons.

**ECRI welcomes these positive developments in the Netherlands. However, despite the progress achieved, some issues give rise to concern.**

The hate crime and anti-discrimination legislation does not provide for sufficiently dissuasive sanctions. The scope of application of the AWGB is too narrow and the authorities are not placed under an explicit duty to promote equality and prevent discrimination. Not all ADVs are independent and the equality bodies do not have sufficient resources for promoting equality and preventing discrimination.

The mainstream political discourse and media reporting continue to be strongly influenced by a xenophobic, fear-fuelling rhetoric and politicians have openly expressed racist beliefs of biological superiority. There are waves of online hate speech, and large amounts of hate speech remain online over long periods of time. As a result of this hostile rhetoric, many people belonging to minorities feel excluded. A considerable number of hate-motivated attacks were, among others, perpetrated against Muslims, mosques and LGBT people, and underreporting of hate crime remains an issue. Antisemitic chants continue to occur during football matches.

The 2013 reform of the integration policies shifted the burden of integration on newcomers, who had to pay and take loans for financing their tuition. Sanctions were introduced for failing in the exams. The success rates in the civic integration exams dropped sharply, just like the achievements in language learning.

Children with a migration background and Antillean children remain overrepresented in special needs schools, are disproportionately often enrolled in the lower streams of secondary education and have difficulties in finding internships. The employment gap of these groups is not narrowing, in part due to discrimination. Migrant workers remain exposed to exploitation.

Roma continue to lag behind in education, and this results in low employment rates, poverty and exclusion. About 1 000 Roma are still stateless. At best a slightly positive development can be observed.

With regard to LGBT persons, topics such as visible intimacy, gender-ambiguous behaviour and adoption remain controversial. The perceived and actual safety and the health conditions of LGBT persons are below average, and young LGBT do not feel comfortable to be open about their sexual orientation and gender identity at school.

According to recent studies, 61% of the respondents with a North African and 43% of those with a Turkish background perceived the most recent police stop as ethnic profiling. People belonging to minorities were disproportionately often stopped and 40% of the stops could not be objectively justified. The legislative and operational framework for such controls is too vague.

**In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The authorities should bring their criminal, civil and administrative law in line with ECRI's General Policy Recommendation No. 7 and ensure full independence of all ADVs. The parliament and government should develop codes of conduct that prohibit hate speech and the media an action plan to tackle routines and reflexes that have stigmatising effects on people belonging to minorities. The system for removal of hate speech from the internet should be improved. The police and prosecution should reach out more intensively to people belonging to minorities, encourage reporting of hate speech to the competent authorities and continue focusing on hate speech in football stadiums.

The authorities should adopt an integration strategy and action plan that organises integration as a two-way process, mobilises the entire society to facilitate, support and promote integration and defines integration indicators and targets to reach for all objectives.\* Such indicators and targets should also be introduced into the Action Plan against Labour Market Discrimination, and when implementing this plan, a focus should be put on improving access to the labour market.\* The authorities should furthermore reduce the gap in the schooling results of children with a migration background and Antillean children. For the integration of Roma, they should develop a specific programme and consider appointing Roma mediators.

The authorities should promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity and enact new legislation on name changes and gender recognition for transgender persons.

They should also introduce a reasonable suspicion standard for control, surveillance and investigation activities, define and describe in detail the conditions under which such measures are permitted, collect data on such measures and use stop and control forms at least in pilot projects.

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\* This recommendation will be subject to a process of interim follow-up by ECRI not later than two years after the publication of the report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism and racial discrimination<sup>1</sup>

1. ECRI has already examined in previous reports the conformity of Dutch legislation with its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. In this fifth report it will therefore focus solely on new developments and persisting shortcomings.<sup>2</sup>

#### - Criminal law

2. While Articles 137c.1, 137d.1 and 137e.1.1 of the Criminal Code (CC) criminalise racist insults and incitement to hatred, Dutch criminal law does not explicitly make racist defamation, racist threats and the public expression, with a racist aim, of an ideology that claims the superiority of, or which depreciates or denigrates a group, an offence, as recommended in § 18 b, c and d of ECRI's GPR No. 7. The authorities point out that defamation and threats are punishable under general provisions (Articles 261, 262 and 285 CC) and that prosecutors will ask, on the basis of general guidelines, for an increase of the sentence by 50 to 100% in the case of a racist motivation. While, according to § 18a of GPR No. 7, public incitement to hatred should be punishable if it is directed against a person or a grouping of persons, Article 137d.1 CC only criminalises explicitly incitement to hatred or discrimination against *persons* and violence against *the person*.<sup>3</sup> According to the Dutch authorities, this can also cover hatred or discrimination against a single person.<sup>4</sup> The public expression of the described ideologies is in their view punishable under Article 137e.1.1 CC on public statements that are insulting to a group of persons on one of the listed grounds.<sup>5</sup>
3. The grounds of colour, language, citizenship, national or ethnic origin and gender identity are not explicitly mentioned in the provisions on hate crime. The Dutch authorities point out that the term "race" in these provisions must be interpreted in the light of Art. 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and encompasses the grounds of colour, descent or national or ethnic origin;<sup>6</sup> the grounds of language and citizenship could also be covered by the ground of "race" and gender identity by the ground of gender. As criminal law has a general preventive function and needs to be clear, ECRI encourages the authorities to include these grounds explicitly in the list of prohibited grounds.
4. ECRI is pleased to note that there is an initiative to criminalise explicitly the denial of genocide, as recommended in § 18e of GPR No. 7, which is, however, pending

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No. 7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. "Racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>2</sup> ECRI notes with satisfaction that in December 2016 the Dutch Parliament rejected with a large majority a proposal to delete provisions on hate speech and discrimination from the Dutch Criminal Code.

<sup>3</sup> EU, EC 2014: 4.

<sup>4</sup> The authorities refer to a decision of the Amsterdam Court of 26 March 2009 on Article 137c, ECLI:NL:GHAMS:2009:BI1298, which, however, requires that the victim is attacked by the perpetrator as a representative of a group.

<sup>5</sup> Cf. Gerechtshof Den Haag, decision of 24 September 2013, ECLI:NL:GHDHA:2013:3617.

<sup>6</sup> See Hoge Raad, decision of 29 March 2016, ECLI:NL:HR:2016:510.

before the Senate, the first chamber of the Dutch Parliament, since 2011.<sup>7</sup> Article 137e.2 CC prohibits the storage and distribution of material that incites to hatred or insults. According to the authorities, the distribution of other racist material such as defaming or threatening material is punishable under Articles 261.2 and 285.2, the preparatory acts of their production and storage under § 137f CC (§ 18f of ECRI's GPR No. 7), and the creation and leadership of a racist organisation and participation in its activities under Article 140.1 and 3 CC (§ 18g of ECRI's GPR No. 7).

5. In its fourth report on the Netherlands, ECRI reiterated its recommendation to provide that racist motivation constitutes an aggravating circumstance. It also recommended that the authorities carry out an evaluation of the effectiveness of the prosecution's instruction to ask for higher penalties in cases with racist motivation. ECRI is pleased to note that the second recommendation has been implemented<sup>8</sup> and that the Minister of Justice and Security announced in a letter to the parliament of 19 June 2018 further research, in particular on the provisions on aggravating circumstances and their application in neighbouring countries.<sup>9</sup> ECRI again stresses that such a provision has an eminent preventive effect, gives clear guidance to judges and contributes to thorough investigation of the presence of such a motivation by the police and prosecution, as required under the case law of the European Court of Human Rights.<sup>10</sup>
6. According to § 23 of ECRI's GPR No. 7, the law should provide for effective, proportionate and dissuasive sanctions for racist offences. However, the maximum penalty for example in Article 137d.1 CC (incitement to hatred) is of only one year of imprisonment or a fine and in Article 137f CC (participation in discriminatory acts) of only 3 months imprisonment or a fine. ECRI was informed that in many cases this results in small fines, or even sentences without a fine. As experience and history have shown that hate speech is a dangerous step on the way towards racially motivated violence, and as racially motivated offences do not only affect individual victims, but entire groups and society as a whole,<sup>11</sup> ECRI welcomes the intention of the government to increase the maximum penalty for incitement to hatred.<sup>12</sup> It encourages the authorities to do so also for other offences that are motivated by racism or intolerance and take inspiration from the range of sentences in other countries.
7. ECRI recommends that the Dutch authorities bring their criminal legislation fully into line with its General Policy Recommendation No. 7 and, in particular, (i) explicitly incorporate the grounds of colour, language, citizenship, national or ethnic origin and gender identity in all provisions of the Criminal Code that are aimed at combating racism and intolerance, (ii) explicitly criminalise public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, (iii) make sure that the law provides for effective, proportionate and dissuasive sanctions for racist, homo- and transphobic offences and (iv) provide explicitly in the Criminal Code that racist, homo- and transphobic motivation constitutes an aggravating circumstance for any ordinary offence.

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<sup>7</sup> In § 7 of its fourth report ECRI noted that genocide denial can already today be punishable under Articles 137c and 137e CC.

<sup>8</sup> See the study of Kruize P. and Gruter P. 2015.

<sup>9</sup> Minister of Justice and Security 2018a.

<sup>10</sup> *R.B. v. Hungary*, no. 64602/12, 12 April 2016, §§ 78 et seq., in particular § 90; *Király et al. v. Hungary*, no. 10851/13, 17 January 2017, §§ 61-82; *Alković v. Montenegro*, no. 66895/10, 5 December 2017, §§ 63-73. See also § 11 of ECRI's fourth report;

<sup>11</sup> On the same line: Minister of Justice and Security 2018a: 1.

<sup>12</sup> See the Coalition Agreement of 2017, Government 2017a: 8.

- **Constitutional, civil and administrative law**

8. General prohibitions of direct and indirect discrimination (§ 4 of ECRI's GPR No. 7) are contained in Article 1 of the Dutch Constitution and Article 1 of the General Equal Treatment Act (AWGB). ECRI takes positive note of the authorities' intention to include into the list of prohibited discrimination grounds in Article 1 of the constitution the additional grounds of sexual orientation and disability.<sup>13</sup> It furthermore welcomes that the second chamber of the Dutch Parliament adopted in July 2018 an amendment to Article 1 AWGB stating explicitly that discrimination on the ground of sex also covers a person's sexual characteristics, gender identity and gender expression; ECRI encourages the Senate to also pass this amendment. While Article 1 of the Constitution contains, in line with Protocol No. 12 to the European Convention on Human Rights (ECHR), an open-ended list of prohibited discrimination grounds, the AWGB applies only to the grounds listed in its Article 1.1.b. ECRI regrets that the grounds of language and ethnic origin are not mentioned in the AWGB and considers that the authorities should also align the list of prohibited grounds of the AWGB with that in Protocol No. 12 to the ECHR, which entered into force in the Netherlands on 1 April 2005.<sup>14</sup>
9. The AWGB does not explicitly provide that the acts of segregation, discrimination by association, the announced intention to discriminate, or inciting others to discriminate are considered as discrimination. The authorities state that discrimination by association, the intention to discriminate and aiding others to discriminate are, according to the case law of the equality bodies, covered by the provisions of the AWGB.<sup>15</sup> However, as the law should be clear also in this respect, ECRI encourages the Dutch authorities to prohibit these acts explicitly in the anti-discrimination legislation.
10. According to § 7 of ECRI's GPR No. 7, the prohibition of discrimination should apply both in the public and in the private sectors. Whereas the AWGB covers the private sector and some areas of the public sector, the authorities point out that Article 1 of the Constitution additionally covers the whole public sector including the police and the military. While ECRI understands that the restricted field of application of the AWGB results from the transposition of EU directives, it considers the Dutch authorities should also bring the AWGB's scope of application in line with the more far-reaching Article 1 of Protocol 12 to the ECHR, according to which the prohibition of discrimination applies to the whole of the private and public sectors. This extension would lead to a considerable improvement in the protection against discrimination, as for example the rule on the reversal of the burden of proof would also apply in all areas of the public sector.<sup>16</sup>
11. According to §§ 2 and 8 of GPR No. 7, the Constitution should enshrine the commitment of the State to promoting equality and the right to be free from discrimination, and the law should place public authorities under a duty to promote equality and prevent discrimination in carrying out their functions. While the authorities cite several articles of the Constitution (Articles 92, 93, 4 and 18 to 23) and a proposal for its amendment<sup>17</sup> that contain elements of promoting equality,

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<sup>13</sup> Government 2017a: 13.

<sup>14</sup> Regarding the Protocol's direct application in the Netherlands see Article 93 of the Dutch Constitution.

<sup>15</sup> Netherlands Institute for Human Rights (NIHR), decisions nos. 2012-190 and 2017-18 and decisions of the former Equal Treatment Commission no. 2012-47.

<sup>16</sup> Cf. *D.H. et al. v. Czech Republic*, no. 57325/00, 13 November 2007, §§ 177 et seq. The Dutch Ombud applied this reversal of the burden of proof in its decision No. 2017/044 on a case of racial profiling.

<sup>17</sup> The Bill No. 86 was approved in first reading and published on 29 March 2018, [https://www.eerstekamer.nl/behandeling/20180329/publicatie\\_wet\\_4/document3/f=/vkn1c48dbitx.pdf](https://www.eerstekamer.nl/behandeling/20180329/publicatie_wet_4/document3/f=/vkn1c48dbitx.pdf), accessed on 28.08.2018.

ECRI recommends that the Dutch authorities introduce in their legal order a provision that explicitly places public authorities under a positive duty to promote equality and prevent discrimination.

12. According to § 9 of ECRI's GPR No. 7, the law should place public authorities under a duty to ensure that those parties to whom they award contracts or benefits respect and promote a policy of non-discrimination. The authorities informed ECRI that the government announced in October 2015 that it will not conclude any new contract with companies that have been convicted for discrimination. According to the general conditions for such contracts, contractors must furthermore comply with the laws and regulations on employment conditions.<sup>18</sup> While these provisions ensure respect of the principle of non-discrimination, ECRI encourages the authorities to go one step further and also to introduce the missing duty for contractors to promote equality positively.
13. The Dutch equal treatment legislation does not itself provide for effective, proportionate and dissuasive sanctions, but victims of discrimination can obtain compensation under general civil law and fines can be imposed under criminal law. According to experts, compensation is rarely granted, in particular for non-pecuniary damages, and sanctions imposed are not sufficiently dissuasive.<sup>19</sup> ECRI considers that the authorities should carry through an evaluation of this aspect of the anti-discrimination legislation and consider introducing more explicit provisions on sanctions in the AWGB.
14. According to Article 36.1 of the Dutch Act on the Financing of Political Parties, a political party is, in line with § 16.1 of ECRI's GPR No. 7, not entitled to public funding during one to four years if it is convicted under Articles 137c, d, e, f, or g or Article 429 quarter CC to pay a fine; the length of the interruption of funding depends on the amount of the fine. Regarding other racist organisations, the authorities have not indicated a similar rule.
15. According to Article 2.20 of the Dutch Civil Code, the district court shall prohibit and dissolve a legal person upon the request of the prosecution service when its activities are contrary to public order. This covers in part § 17 of GPR No. 7, as the notion of public order includes racist criminal offences; however, organisations that promote racism without committing criminal offences cannot be dissolved under this provision.
16. ECRI recommends that the Dutch authorities generally align their anti-discrimination legislation with its General Policy Recommendation No. 7 and, in particular, (i) align the list of prohibited discrimination grounds with that in Protocol No. 12 to the European Convention on Human Rights, (ii) extend the scope of application of the General Equal Treatment Act to the whole of the public and private sectors, (iii) introduce a legal provision placing public authorities under a positive duty to promote equality and to prevent discrimination and (iv) evaluate whether Dutch anti-discrimination legislation provides for effective, proportionate and dissuasive sanctions.

- **Equality bodies**<sup>20</sup>

17. The Netherlands Institute for Human Rights (NIHR) took over the competencies of the former Equal Treatment Commission in 2011. It decides on complaints of discrimination by decisions through non-binding recommendations and carries out research. About three quarters of its recommendations are followed and ECRI takes positive note of the NIHR's intention to make use of its power to bring

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<sup>18</sup> See e.g. Article 27.1 of the General Terms and Conditions for the Accomplishment of Contracts on the Provision and Services (ARVODI-2018), Government 2018.

<sup>19</sup> EELN 2018: 87.

<sup>20</sup> The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2 which was published on 27 February 2018.

strategic litigation cases before the judiciary. The National Ombudsman's mandate encompasses the assessment of complaints concerning the action of administrative authorities in the field of equality and discrimination based on Article 1 of the Constitution. He defends the interests of citizens and monitors the quality of public services in the Netherlands; 95% of his decisions are followed.

18. In the wake of the enactment of the Act on Local Anti-Discrimination Bureaus in 2009, these national structures have been complemented at local level by 38 Anti-Discrimination Bureaus (ADVs), of which 19 work together in the National Association of Anti-Discrimination Bureaus and are supported by the expert body "Article 1". The ADVs offer assistance to victims and register reports of discrimination; they can also grant free assistance in cases before the NIHR.
19. An assessment of the functioning of the ADVs in 2017 showed that some of them have been established at regional level and cover several of the 380 Dutch municipalities, while others have been set up within municipal administrations. The evaluation concluded that regionally organised, independent ADVs seemed to be best suited to fit victim's needs. According to another survey, municipalities also favour independent ADVs at regional level.<sup>21</sup>
20. As the ADVs are supposed to take action also with regard to discrimination by local authorities, ECRI considers that the authorities should ensure that the ADVs are fully independent, as recommended in §§ 2 and 22 et seq. of its GPR No. 2. In addition, they should consider regrouping the ADVs at regional level in order to create strong bodies and to avoid scattering of the limited and financial resources (§§ 7 et seq. of the explanatory memorandum to GPR No. 2).
21. Among the basic functions that should be assigned to equality bodies (§ 10 of GPR No. 2), the existing bodies cover the support and litigation and the decision-making function. ECRI was informed that the third basic function - to promote equality and prevent discrimination - is less developed in the existing system.<sup>22</sup> ECRI therefore considers that the authorities should clearly assign each of the different competences listed in § 13 of GPR No. 2 either to the NIHR or to the ADVs and provide them with the necessary human and financial resources to entirely fulfil also this function (§ 28 of GPR No. 2), which is crucial for achieving equality and sustainably preventing and eliminating racism and intolerance.<sup>23</sup>
22. ECRI recommends that the Dutch authorities ensure that all local Anti-Discrimination Bureaus become fully independent, and that they are merged at regional level or establish strong regional co-operation. The authorities should assign all competences to promote equality and prevent discrimination listed in § 13 of its General Policy Recommendation No. 2 either to the equality bodies at national or regional/local level, and provide them with the necessary resources.

## **2. Hate speech<sup>24</sup>**

### **- Data**

23. According to the joint 2017 Report on Discrimination Figures drafted by the Police, the ADVs, the Hotline for Discrimination on the Internet (MiND) and the NIHR, the

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<sup>21</sup> Ministry of the Interior and Kingdom Relations (MIKR) 2018: 12; Regioplan 2017; Movisie 2017.

<sup>22</sup> Regarding the NIHR see Article 3 of the Netherlands Institute for Human Rights Act.

<sup>23</sup> In this respect, ECRI takes positive note of the intention expressed in the letter of the Minister of Interior 2016 to focus more on prevention.

<sup>24</sup> According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

police registered 3499 discrimination cases (20% less than in 2016), the ADVs 4 691 (1% less), MiND 1 367 (49% more) and the NIHR received 416 requests for an opinion (10% less) and 4 259 questions (over 30% more).<sup>25</sup> Ethnic origin remained the most frequent ground; the police registered 41% of all cases on this ground, 27% on sexual orientation, 8% on antisemitism and 5% on Islamophobia. 603 of the police cases involved violence and another 472 threats. Among the cases registered by MiND, 37% concerned social media, 18% blogs and opinion sites and 37% other websites.<sup>26</sup>

24. The prosecution dealt in 2017 with 144 specific discrimination offences. 42% were registered as based on skin colour, ethnicity and national or ethnic origin, 41% on antisemitism (mostly antisemitic chants of football hooligans), 8% on sexual orientation and 7% on Islamophobia. 42% occurred during sports events, 19% on the internet and 13% in streets or public places. In 44% of the cases, an indictment was issued and in another 17% a punishment order. 71% of the indicted cases led to a criminal sentence. Under general criminal law, another 187 discriminatory offenses were registered.<sup>27</sup> The Dutch Press Council has not received any complaints of hate speech in recent years.
25. The results of the Second European Union Minorities and Discrimination Survey of the EU (MIDIS II survey) of 2017 point to a high degree of underreporting:<sup>28</sup> 39% of all people with North African origin living in the Netherlands responded that they had recently experienced discrimination in the fields of public and private services, and 12% of people of Turkish and 11% of North African descent responded likewise with regard to education. Only 16% of the victims with Turkish origin and 29% of the victims of North African descent had filed a complaint. Also, 70% and 69% respectively of all respondents from these groups were not aware of any organisation that would offer support or advice to them.<sup>29</sup> Victims of hate speech – including journalists - often do not report cases to the authorities as they have the impression that it would not have any consequence, and as they lack confidence in the authorities.<sup>30</sup> According to the authorities the reported cases of online hate speech constitute only the “tip of the iceberg”.
26. In a study from 2015, 84% of the Dutch population considered that discrimination on the grounds on ethnic origin was widespread; 66% answered likewise for the ground of religion. In a study about the perception of different groups, respondents awarded a score of only 45 for people of Moroccan origin, 53 for those of Antillean origin, 57 for those of Turkish and 63 for those of Surinamese origin.<sup>31</sup>

- **Public discourse**

27. ECRI takes positive note that the 2017 government coalition agreement states that there is no room in the Dutch society for homophobia, antisemitism, Islamophobia, [...] hate speech or violence against minorities. A new National Antidiscrimination

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<sup>25</sup> The police registered another 1 506 discrimination incidents directed against civil servants. The increase in the numbers of MiND can partly be explained by the expiry of the possibility to report online discrimination also to the Contact Point for Discrimination on the Internet MDI, and a part of the increase in the numbers of the NIHR is connected to the reporting point Maternity Discrimination, which was set up in 2017, MIKR 2018a.

<sup>26</sup> MIKR, Police and Art.1 2018.

<sup>27</sup> Prosecution 2018.

<sup>28</sup> See in this respect also the civil society monitoring reports CIDI 2018 and Van der Valk 2018.

<sup>29</sup> EU 2017a: 37 et seq. Unfortunately this survey does not contain comparable data for other groups.

<sup>30</sup> Foundation for Political, Economic and Social Research (SETA) 2017: 395; see also EU 2017a: 49.

<sup>31</sup> In the relevant study, the respondents were asked to indicate on a scale of 0 to 100 what they think of a group. A thermometer is often used here as an image. The number 100 stands for very positive feelings and the number 0 for very negative feelings. For more details see The Netherlands Institute for Social Research 2016a: 15 and 2016b: 295 and 251 et seq.



Programme (see also § 87 below) was adopted in 2016 and leading politicians such as the Minister of the Interior and Kingdom Relations (MIKR) have publicly condemned hate speech. Despite these positive developments, ECRI observes that the mainstream political discourse continues to be strongly influenced by a xenophobic,<sup>32</sup> fear-fuelling rhetoric driven by the Party for Freedom (PVV) and the Forum for Democracy (FvD). This divisive discourse, which can be observed since the beginning of the century,<sup>33</sup> is nourished by repeated Islamophobic statements<sup>34</sup> and actions such as the opening of websites for reporting complaints over workers from Romania, Poland and Bulgaria in 2012, regarding asylum seekers in 2015 and of a Muhammad cartoon contest in August 2018 by the PVV.<sup>35</sup>

28. According to civil society and experts, several other political parties have reacted by also engaging in divisive speech using a generalising narrative of “us and them”,<sup>36</sup> ranging from assigning collective responsibility to groups of people on the basis of their migrant background or religion<sup>37</sup> to the trivialising of prejudice and the negative representation of Muslims compared to “the ordinary Dutchman”. The 2017 election campaign was marked by foreign policy tensions with Turkey,<sup>38</sup> very much focused on migration and asylum, and in January 2017 the Prime Minister wrote in an open letter published online and in full-page newspaper advertisements: “We feel a growing discomfort when people abuse our freedom to mess up things here, while they have come to our country for that freedom [...] I understand very well that people think: if you reject our country so fundamentally, I prefer you to leave. I also have that feeling. Be normal or go away.”<sup>39</sup> People belonging to minorities perceive this discourse as hostile and xenophobic.<sup>40</sup>
29. Hate speech reached a new peak in February 2018, when an MP of the FvD openly showed racist beliefs of biological superiority in an interview with a well-known newspaper<sup>41</sup> and the party leader refused to distance himself from this statement, when asked to do so by a member of the government.<sup>42</sup> In March 2018, the number two candidate of the same party for the Amsterdam municipal elections had to step

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<sup>32</sup> See ECRI’s definition of xenophobia, which goes beyond the field of criminal law, ECRI 2016b: § 7ii of the explanatory memorandum to GPR No.15.

<sup>33</sup> See ECRI’s previous reports and SCP 2018a: 76.

<sup>34</sup> See the examples given in SCP 2015, Ruigrok, N., Fokkens, A. et al. 2017. Another example is a statement of the leader of the PVV during the 2017 election campaign: Dutch values are based on Christianity, on Judaism, on humanism. Islam and freedom are not compatible, Independent 2017.

<sup>35</sup> NOS 2015. The cartoon contest soon was cancelled due to death threats, The Guardian 2018b.

<sup>36</sup> See for example the following statements of the Minister of Public Health from 2016: The idea that all cultures are of equal value is a “sacred house” of the left and should be stopped immediately, Trouw.nl 2016; Our culture is a lot better than all the others I know. At least for the woman. At least for the gay and transsexual, Government 2016b.

<sup>37</sup> SCP 2018a: 76 and Nederlands Juristen Comité voor de Mensenrechten (NJCM) 2018: 7 citing as an example the statement „The Muslim community has to start a discussion about whether or not this is normal” by the National Coordinator for Counterterrorism and Security (NCCS) about Dutch citizens radicalising and travelling to Syria to fight with Isis.

<sup>38</sup> Nltimes 2017.

<sup>39</sup> Letter available at <https://www.vvd.nl/nieuws/lees-hier-de-brief-van-mark/>, accessed on 05.09.2018. Regarding the criticism of this statement see for example The New York Times 2017.

<sup>40</sup> SCP 2015: 288 et seq.; 2018a: 83 and NJCM 2018: 7. NJCM cites in this context also the following statement of the leader of the political party CDA: “The common Dutchman wants to work, if only there were jobs. He wants to give his children a good future and wants a society in which people look after each other. However, the common Dutchman hits a brick wall. The job has been given to an immigrant or an Eastern-European.”

<sup>41</sup> He said in February 2018 that it would have long been proven that there would be a relationship between IQ and race, De Telegraaf 2018; DutchNews.nl 2018c. Regarding the increasing influence of biologically inspired racism in the Netherlands see also NCCS 2018: 20.

<sup>42</sup> De Volkskrant 2018.

down after having supported in a WhatsApp chat that gay rights made society dumber.<sup>43</sup> In July 2018, a government minister was heavily criticised for having said that peaceful multicultural societies would not exist and that it would be genetically determined that people from different groups can't get along. In a six hour-long parliamentary debate about these statements he finally retracted from his statements and acknowledged that he chose his words "unfortunately and carelessly"; a non-confidence motion against him was in the end rejected.<sup>44</sup>

30. As a result of this divisive and xenophobic discourse people belonging to minorities feel that it has become increasingly acceptable to make condescending and discriminatory statements, that they are considered as second-class citizens, and that they are exposed to institutionalised racism based on covert ideas of white supremacy, that come to light in statements such as the ones cited in the previous paragraph. The resulting feeling of exclusion increases divisions in society, affects the feeling of attachment of Muslims to the Netherlands<sup>45</sup> and can contribute to the emergence of parallel societies and radicalisation.<sup>46</sup>
31. A similar feeling of exclusion by Black people is illustrated by the debates around "Black Pete", a Dutch tradition, in which Saint Nicholas is attended by a Black servant, who for many is an offensive caricature that perpetuates racist stereotypes harking back to slavery.<sup>47</sup> In November 2017, demonstrators who wanted to protest against this practice in Dokkum were blocked on the highway by traditionalist counter-demonstrators and the municipality later prohibited the demonstration on the declaration of a state of emergency;<sup>48</sup> the demonstrators are of the opinion that the police did not take sufficient precautions to protect the planned course of the demonstration.
32. Representatives of minority groups furthermore perceive several recent legislative initiatives as targeted at them:<sup>49</sup> the explanatory memorandum to the recently enacted law of 27 June 2018 on the prohibition of wearing face-veiling garments in some public places makes explicit reference to the Burka and the Niqab;<sup>50</sup> parliamentary debates on tightening hate speech legislation were triggered by and focused on hate speech of a radical imam, but did not cover in a similar way hate speech of public figures from the majority population;<sup>51</sup> and the debates on a possible law on transparency of foreign financing focused on foreign funding of mosques, but not of other religions' places of worship.<sup>52</sup> According to experts, such patterns reinforce the above-mentioned feeling among Muslims that double standards apply, that their thoughts and actions are viewed differently, and that hurtful statements by politicians about Muslims are seen as acceptable. This sense of injustice and moral indignation encompasses also the public discussion and

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<sup>43</sup> In the WhatsApp chat he defended an argument that gay rights made society more stupid, and continued "That is based on the notion that gays have relatively higher IQs and at the moment that they do not procreate the whole society becomes dumber. No hate just facts", Nltimes.nl 2018c.

<sup>44</sup> NRC 2018a and b; Nltimes.nl 2018a; DutchNews.nl 2018b.

<sup>45</sup> The EU MIDIS II study shows that the feeling of attachment of Muslims to the Netherlands is relatively low, EU FRA 2018: 20.

<sup>46</sup> SCP 2018a : 83 et seq. ; SCP 2015 : 288.

<sup>47</sup> BBC 2016.

<sup>48</sup> DutchNews.nl 2017.

<sup>49</sup> See in this respect European Centre for Democracy and Development et al. 2018: 116 et seq.

<sup>50</sup> Dutch Parliament 2015. In this context, ECRI notes the statements of the mayors of Amsterdam, Utrecht and Rotterdam that they will not give priority to the enforcement of this law.

<sup>51</sup> NOS 2018.

<sup>52</sup> See in this context similar patterns described in the third and fourth report on the Netherlands.

media reporting on national and international political events, such as for example elections and armed conflicts.<sup>53</sup>

33. With regard to the annual commemorations of the abolition of slavery on 1 July, ECRI takes positive note of the efforts of leading politicians and media to ensure wide media coverage of these events. At the same time, it is concerned about the waves of online hate speech that they unleash. Another example of a wave of online hate speech is that of about 40 000 abusive online comments following the announcement of Sylvana Simons, a Black politician, actress and television presenter, to stand as a candidate for the party “Denk”.<sup>54</sup>
34. People belonging to minorities feel that Dutch media contribute to their exclusion. A research on more than 600 000 news items in 2016 and 2017<sup>55</sup> concluded that the adjectives most used to describe Muslims are 'radical', 'extremist' and 'terrorist'; in contrast Dutch people are often described as 'known', 'average' and 'beautiful'. The Dutch also seem to 'win', 'score' and 'improve', while Muslims mainly 'insult', 'convert' and 'rape'. Where Dutch and Muslims are both mentioned, the reporting is mostly about tensions in society. In many news items dealing with Muslims, the PVV or its leader are also mentioned and the PVV's strong language is taken up. Such repeated negative news lead to a stereotypical representation of Muslims, increase prejudice and can trigger discrimination. According to the study, media have a responsibility here, as they provide a platform for disseminating stereotypes and contribute to the fostering of these stereotypes in society.<sup>56</sup> Minority representatives informed ECRI that Dutch television and other media “tend to be very white and indigenous”, and that people belonging to minorities do not often have the opportunity to express themselves in these media. Such media reporting exacerbates perceptions of double standards, injustice and exclusion and motivates young people to turn to foreign media.<sup>57</sup>
35. At football matches, in particular those involving Ajax Amsterdam, antisemitic hate speech continued to occur. Afrophobic “jungle sounds” also occurred and the prosecution service had to investigate a considerable number of cases in which hooligans openly incited hatred.<sup>58</sup> According to the Royal Dutch Football Association (KNVB), an even bigger issue is the amount of Islamophobic, homophobic and antisemitic hate speech at the level of the amateur clubs, which occurs during training and roughly in every second of the 30 000 matches they annually play. There is a huge underreporting also in this field, and homosexual players do not dare to come out.

- **The authorities' response**

36. To effectively prevent and combat hate speech, action is required in several areas, notably awareness raising and prevention, self-regulation, the use of regulatory powers and, as a last resort, criminal investigations and sanctions against hate speech (see ECRI's GPR No. 15 on combating hate speech).
37. ECRI welcomes that there is awareness in the Netherlands that school education, general awareness-raising campaigns and specific projects and campaigns play a key role in preventing hate speech; the 2016 National Anti-Discrimination

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<sup>53</sup> For examples see SCP 2015: 288 et seq.

<sup>54</sup> BBC 2016; New York Times 2018.

<sup>55</sup> Ruigrok, N., Fokkens, A. et al. 2017 ; NRC.nl 2017c.

<sup>56</sup> An interlocutor of ECRI pointed out that this negative reporting can partly be explained by the fact that media are under pressure to create buzz and problem-stories that sell.

<sup>57</sup> SCP 2015: 296 et seq. See in this respect Rtlatenight 2018.

<sup>58</sup> Most hooligans are prosecuted for incitement to hatred for the chant: “ Hamas, Hamas, Jews to the gas”, Prosecution 2018: 16.

Programme focuses on these areas.<sup>59</sup> ECRI is further pleased to note that the topics of discrimination and tolerance are mandatory parts of civic education; the authorities are in the process of further strengthening civic education in all types of schools and taking measures to better tackle bullying at school.<sup>60</sup> At the same time, ECRI encourages the authorities to continue reviewing, together with representatives of minority groups, the representation of different groups in textbooks in order to remove any remaining passages that could foster prejudice, and to further promote the use of different perspectives in history teaching.<sup>61</sup> It also refers back to the recommendation made in § 22 to strengthen the competence of the equality bodies to promote equality and prevent discrimination.

38. ECRI is concerned about information from various civil society representatives, according to which the funding allocated to NGOs has diminished over recent years. As the remaining funding is increasingly tied to precise activities and projects, NGOs state that they have little margin to develop their own, independent contributions to the prevention of hate speech. Some grassroots organisations of Black people for example did not have the know-how to apply successfully for projects funded in the framework of the Decade for People of African Descent. ECRI encourages the authorities to review and evaluate their funding approach and to ensure that civil society has enough room to develop its own, innovative and effective projects.
39. ECRI once again expresses serious concern about the evolution of the political discourse in the Netherlands. While Dutch society rightly values freedom of expression, ECRI considers that the use of counter-speech alone has not proven sufficiently effective to prevent the harmful impact of constant hate speech in the mainstream political discourse. The fixation on issues stoking fears has involuntarily strengthened xenophobia, deepened divisions in society and increased exclusion of people belonging to minorities.
40. In this situation, ECRI considers, as recommended in § 6 of its GPR No. 15, that the parliament and government should develop and adopt codes of conduct that prohibit hate speech and provide for suspension and other sanctions for breach of their provisions. Already the process of developing such a code of conduct usually attracts politicians' and media's attention to the divisive effects that hate speech and the above-mentioned rhetoric patterns have. It may also trigger a more inclusive discourse that could for example emphasise the responsibility of the whole society for the sustainable integration of people with migration backgrounds (see §§ 68 et seq.) and highlight that Christians, Muslims and Jews all worship the same God.
41. ECRI recommends that the Dutch parliament and government develop and adopt codes of conduct that prohibit hate speech and provide for suspension and other sanctions for breach of their provisions.
42. Regarding the media, ECRI appreciates the sensitiveness of the Dutch society for freedom of expression and media. At the same time, it considers it is important to invest in prevention of hate speech also in this sector. Media professionals must be sensitised to their responsibility and the danger that they contribute, by focusing on "problem stories" and creating "buzz", to the amplification of fears and xenophobia and the dissemination of hate speech, and thus trigger and reinforce prejudice and racism. In this respect, ECRI considers that the auto-regulatory

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<sup>59</sup> Government 2016.

<sup>60</sup> ECRI takes positive note of an initiative in Amsterdam, where the municipality has taken additional measures to ensure that all schools teach human rights at the same, high standards.

<sup>61</sup> Examples would be to cover the Second World War also in territories where people with migration backgrounds originate from, and to deal with the issue of colonisation and slavery also from the perspectives of indigenous people and victims.

bodies of the media, such as the press council, should sensitize media professionals about the existing codes of conduct and train them in respecting their rules. At the same time, ECRI takes positive note of plans to improve representation of LGBTI persons in the media.<sup>62</sup> Creating an inclusive work atmosphere in media companies and supporting and protecting media professionals belonging to minorities are also important issues to be dealt with in this context.<sup>63</sup>

43. With regard to the press council, ECRI regrets that this body did not receive a single complaint concerning hate speech over the last five years. ECRI considers that the press council and the authorities should raise the awareness of people and groups exposed to hate speech about the press council's competence to decide on complaints on hate speech in the media. ECRI finally encourages the authorities to insert in the media legislation an explicit prohibition of the publication of hate speech without infringing on freedom of expression.
44. ECRI recommends that the authorities initiate, without encroaching on media independence, a process in which media and their representative organisations develop an action plan to tackle routines and reflexes that have stigmatising effects on groups such as Muslims, Black people and Roma and to ensure balanced reporting on issues relating to such groups.
45. With regard to electronic media, ECRI considers that the existing system for preventing and combating hate speech is not robust enough, as large amounts of hate speech remain online over weeks, months and years and contribute to nourishing hatred. ECRI encourages the authorities to continue motivating internet companies to enforce the existing codes of conduct and remove hate speech quickly.<sup>64</sup> Furthermore, MiND or another organisation should be tasked to build up awareness among internet users about the limits to freedom of expression and the illegality of many forms of hate speech. Schools should for their part contribute to improving this strand of internet proficiency.<sup>65</sup> Where such preventive and self-regulatory measures are not sufficient, external regulation by the media regulators or the legislator would be needed to improve the combat against online and offline hate speech.<sup>66</sup> In addition, MiND or another organisation should be given sufficient funding to monitor the internet systematically for hate speech,<sup>67</sup> and to carry out research and build up knowledge on how to trace and eliminate it quickly. The annual funding of 180 000 Euros of this NGO is not even sufficient to compile data about the waves of cyber hate speech which can amount to tens of thousands of offensive posts on a single event.
46. ECRI recommends that the authorities build up awareness among internet users about the prohibition of hate speech, continue motivating internet companies to enforce the existing codes of conduct, and task and fund an organisation to monitor proactively the internet for hate speech.
47. ECRI is pleased to note that the prosecution has carried through several strategic cases for punishing the perpetrators of criminal hate speech.<sup>68</sup> In ECRI's view these cases now repay the investment that the prosecution has invested over 20 years in developing a unit specialising in the prosecution of hate speech and hate crime

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<sup>62</sup> Ministry of Education, Culture and Science 2018a: 12 et seq.

<sup>63</sup> Concerning online hate-speech directed at two Black journalists see Volskrant.nl 2018.

<sup>64</sup> See in this respect the monitoring exercises of the EC and the draft revised EU Audiovisual Media Services Directive, EU 2018.

<sup>65</sup> In this respect ECRI takes positive note of ongoing initiatives.

<sup>66</sup> See in this respect for example the German Network Enforcement Law.

<sup>67</sup> The prosecution is carrying out such monitoring, but it is limited to hate speech which is punishable under criminal law, and the authorities state that the existing reports only show the "tip of the iceberg".

<sup>68</sup> See for example the three cases dealt with in the following paragraphs.

and that specialised prosecutors have been appointed in the regional offices and at the office at the Court of Appeal. ECRI considers this investment, the development of new guidelines by the prosecution and the compilation of standard sets of questions by the police for investigating hate speech and discrimination cases and the signature of co-operation agreements with the ADVs as good practices. Through this co-operation, the police, the prosecution and the ADVs can give tailor-made responses to hate speech cases of different gravity, ranging from mediation to criminal prosecution.

48. The wide media coverage of the strategic cases has helped to reinforce the general preventive function of the criminal law provisions against hate speech and thus contributed to preventing other potential perpetrators from using hate speech. In this context, ECRI takes positive note of the renewed prosecution of the leader of the PVV for Islamophobic comments, which resulted in a criminal sentence, which was appealed by the prosecution, as no fine or other sanction was imposed in first instance. This case could also have an impact on the public financing of the PVV (see § 14 above).<sup>69</sup>
49. Another important strategic case is the one against 21 perpetrators who posted online hate speech against Sylvana Simons (see § 33 above). Sixteen of them were recently sentenced to fines from 150 to 450 Euros and four others to community service (60 to 80 hours).<sup>70</sup> Also the perpetrators of the blockage of the highway to prevent the manifestation concerning “Black Pete” in 2017 (see § 31 above), were sentenced by the court of Leeuwarden to community service ranging from 80 to 240 hours of community work. While ECRI is pleased about the wide media coverage of these sentences and the resulting message to society and other potential perpetrators, it considers that there is reason to fear that the sentences are not sufficiently dissuasive (§ 23 of GPR No. 7). Given that such cases of hate speech not only affect the victim, but whole communities and thus deepen societal divide and exclusion, ECRI refers back to the recommendation made in § 7 of this report to provide for effective sanctions for racist offences.
50. Apart from such strategic cases, there are few sentences for criminal hate speech and minority representatives still perceive the enforcement of the hate speech provisions as weak. To further improve and speed up the reporting, investigation and prosecution of criminal hate speech, ECRI encourages the authorities to maintain, after the discontinuation of the former Dutch National Expertise Centre on Diversity (LECD-police), a strong organisation within the police that specialises in hate speech and hate crime.<sup>71</sup> A high-ranking police officer should be nominated to lead this organisation and specialised police agents should reach out even more intensely to people belonging to minorities, build up confidence through a sustainable dialogue, and encourage people and groups exposed to hate speech to file complaints.<sup>72</sup> In particular the ties with Black and Muslim communities should be intensified.
51. ECRI recommends that the prosecutors and police officers specialising in hate speech and hate crime reach out more intensely to people belonging to minorities, build up confidence through a sustainable dialogue, and encourage people and

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<sup>69</sup> It should be noted that the PVV did, at the time of the drafting of this report, for other reasons not receive public funding.

<sup>70</sup> Prosecution 2018: 10.

<sup>71</sup> As a result of the evaluation of the “LECD police”, its tasks were transferred to the “Power of Difference programme” at the end of 2015.

<sup>72</sup> In this context, ECRI takes positive note of the activities of the Dutch Victim Support. It considers that prosecutors and police agents specialised in hate crime should raise awareness among groups and individuals exposed to hate speech about the assistance this organisation can provide.

groups exposed to hate speech to report hate speech cases to the competent institutions (§§ 13 and 18 of ECRI's General Policy Recommendation No. 11).

52. With regard to increasing diversity within the law enforcement services, ECRI welcomes the target set by the police to have a 25% intake of employees with a minority background, to invest into an inclusive working climate and maintain such colleagues within the police. The prosecution service has signed a Diversity Charter committing itself to promote diversity within its services.
53. Regarding antisemitism and other forms of racism in sports, ECRI takes positive note of the study published in 2014<sup>73</sup> and the measures taken to prevent and counter hate speech and in particular racist chants in football stadiums. The authorities and the KNVB ran a campaign "Football is for all. Strike-out discrimination"; the captains of professional teams played with rainbow banners and the KNVB appointed a diversity manager in 2014. Furthermore, the KNVB agreed with the football clubs on a Directive on Tackling Verbal Violence, which was incorporated in the handbook Professional Football 2014/15. It lays down action to take against abusive chants and provides for sanctions such as the interruption of matches and stadium bans of up to five years.<sup>74</sup> Since 2016, the KNVB regularly meets with Jewish representatives to tackle together offensive behaviour and chants triggered during Ajax Amsterdam matches. Other minority groups were subsequently included in this exchange. ECRI encourages the authorities, the KNVB and other sports associations to continue investing in the prevention of hate speech at the professional and amateur level. At the same time, it considers that the prosecution should continue to be intransigent with regard to racist chants<sup>75</sup> and to ensure appropriate media coverage, in order to show hooligans that stadiums are not a lawless zone.
54. ECRI recommends that the Dutch authorities continue prosecuting hate speech in football stadiums and thus ensure respect and knowledge of the hate speech legislation. The authorities should also support the dialogue between relevant football clubs and civil society with a view to reliably prevent racist and in particular antisemitic chants and behaviour.

### **3. Racist and homo/transphobic violence**

55. In 2017, 603 incidents involving hate-motivated violence were reported to the police; 329 were registered on the ground of ethnic origin and 239 on sexual orientation.<sup>76</sup> The figures of the prosecution are much lower: in 2017, it registered 28 cases of hate crime, most of which concerned sexual orientation.<sup>77</sup> Attacks on Muslims as well as vandalism and arson against mosques reached peaks in 2015 and 2016, when the number of asylum seekers sharply increased and terrorist attacks were committed in other European countries. While there is no official data about the numbers of such attacks, civil society estimates them at 20 to 25 per year. One of the most serious cases was the arson attack in February 2016 on a mosque in Enschede during prayer time, when approximately thirty people were in the mosque.<sup>78</sup> In December 2016, the buildings of a former swimming pool in Culemborg were burned down shortly after the local Islamic association had

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<sup>73</sup> Auditteam Voetbal en Veiligheid 2014.

<sup>74</sup> During the season 2016/2017, 569 stadium bans were imposed, but there is no information on how many concerned racist, homo- or transphobic incidents, Politie 2017: 43.

<sup>75</sup> In this respect, ECRI takes positive note of the criminal conviction of a hooligan chanting the "Hamasslogan" by the Rotterdam Court on 25 September 2017, ECRLI:NL:RBROT:2017:7296. See also the ground-laying decision of the Supreme Court of 15 September 2009, LJN:BI4739. See also Prosecution 2018: 25.

<sup>76</sup> The police registered another 474 cases of hate-motivated threats, MIKR, Police and Art.1 2018: 4.

<sup>77</sup> Prosecution 2018: 16.

<sup>78</sup> Foundation for Political, Economic and Social Research (SETA) 2017: 395.

bought them with the intention to transforming them into a mosque.<sup>79</sup> According to civil society, Muslim women wearing a headscarf have also regularly become victims of racist attacks.

56. Antisemitic incidents including those involving violence increased in particular in 2014 when the Israeli-Palestinian conflict escalated.<sup>80</sup> In 2017 and 2018, two attacks on a Jewish restaurant in Amsterdam<sup>81</sup> spread fear among the Jewish community. For 2016, a civil society report concluded that 45 of the violent incidents recorded by the police were inspired by right-wing extremism (38 in 2015, 42 in 2014, 17 in 2013 and 13 in 2012).<sup>82</sup> These and other hate-motivated attacks have severely affected the feeling of safety of different communities. ECRI was for example informed that a Jewish teacher does not dare to be open about his origin or to teach about the Holocaust. Others no longer show visible signs of their religion in public.<sup>83</sup>
57. Several violent attacks against LGBT people were reported in the last years. In April 2016, two lesbian women were severely beaten in the city of Groningen, while walking home hand in hand after a night out. In October 2016, a gay couple was attacked and seriously injured on a ferry in Amsterdam.<sup>84</sup> Another couple was attacked by a group of teenagers in April 2017 in Arnhem when holding hands. One of them lost four teeth after having being beaten with a pair of bolt cutters and the other suffered injuries to his chest, back and legs. Thousands of people went to march through the streets of Amsterdam in protest. Both gay and straight men all over the country, including politicians, held hands on social media to show support for the gay couple.<sup>85</sup>
58. In March 2018, three perpetrators were sentenced to prison terms from 28 to 40 months for a homophobic attack on a Jamaican refugee in Amsterdam, who was knocked out and lost two teeth.<sup>86</sup> Between October 2015 and June 2016 the gay rights group COC received 32 reports of serious threats against LGBT residents in asylum centres, even though intimidation often goes unreported, as victims are afraid to come forward.<sup>87</sup> COC asked the State Secretary in charge to ensure separate housing for LGBT asylum seekers.
59. According to the information provided to ECRI, cases of racist and homo/transphobic violence are effectively prosecuted when they are reported to the law enforcement services. ECRI takes for example positive note of the judgment against the four perpetrators of the arson attack on the mosque at Enschede who were sentenced to prison terms of four years. At the same time, it notes that the prosecution and the court did not base these harsh sanctions on the racist motivation of the attack, but on anti-terror legislation. In other cases, where anti-terror provisions could not be applied, the sentences were much lower. Following the attack on a refugee centre in Woerden for example, fifteen of the eighteen perpetrators were sentenced to community service, eight of them to 120 hours. As there is again reason to fear that such sanctions are not sufficiently dissuasive, ECRI refers back to the recommendation made in § 7 of this report to introduce a provision providing that racist motivation constitutes an aggravating

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<sup>79</sup> SETA 2017: 397.

<sup>80</sup> Anne Frank Stichting, Verwey Jonker Instituut 2017b: 3 et seq.; 2014: 15 et seq.

<sup>81</sup> Nltimes.nl 2018b.

<sup>82</sup> Anne Frank Stichting, Verwey Jonker Instituut 2017b: 7 et seq. See in this context also NCCS 2018.

<sup>83</sup> Regarding LGBT people see in this respect also §§ 89 et seq. of the report.

<sup>84</sup> One of the perpetrators was sentenced to 30 months of imprisonment, NRC.nl 2017b.

<sup>85</sup> BBC 2017; DW 2017.

<sup>86</sup> Prosecution 2018: 29; Dagblad van het Noorden 2018.

<sup>87</sup> DutchNews.nl 2016.



circumstance. As there is also evidence for continued underreporting of hate-motivated violence,<sup>88</sup> ECRI refers back to the recommendation already made in § 51 of the report to further intensify the dialogue between the police, the prosecution and people belonging to minorities in order to increase confidence and ensure reporting of all cases of hate-motivated violence.

#### **4. Integration policies**

60. According to the official statistics for 2018, 3 971 859 people living in the Netherlands had a migration background (23% of the population): 2 079 329 “first generation migrants” were born abroad, and another 1 892 530 “second generation migrants” had at least one parent born abroad. According to these statistics, the biggest groups with migration background originate from Turkey (404 459), Morocco (396 539), Indonesia (361 594), Surinam (351 681), Germany (354 136) and Poland (173 050).<sup>89</sup> In some big agglomerations, the number of people with migration background is close to that of people without a migration background.

61. In this report, ECRI will look into integration policies for people with migration backgrounds, for Antilleans<sup>90</sup> and for Roma.

##### **- Integration policies for people with a migration background and Antilleans**

62. As described in ECRI’s last report, the authorities changed their approach to the integration of migrants through amendments to the Civic Integration Act (CIA), which entered into force on 1 January 2013. Refugees and asylum seekers likely to be granted recognition are entitled to participate in a pre-integration course free of charge that consists of 24 hours of language lessons, a course “Knowledge of Dutch Society” and individual coaching. Status holders have access to another 121 hours of language lessons. According to Articles 3 and 5 CIA, all foreigners originating from outside the European Economic Area or Switzerland are in general required to integrate and pass a civic integration examination within three years. The integration package consists of the signature of a participation agreement, an oral and written language test at least at level A2 of the European Framework of Modern Languages, an examination on knowledge of Dutch society and orientation about the Dutch labour market. ECRI is highly concerned about the fact that people who are subject to this integration duty have, since this reform, to search themselves for appropriate courses, which are no longer provided by municipalities, but by private companies. They also need to pay for the courses and the examination and can obtain a loan for the expenses that can amount to 10 000 Euros.<sup>91</sup> New integration policies were agreed upon in 2017 (see below § 67), but new legislation is expected to enter into force only in 2020.

63. As in the previous report, ECRI expresses its deep concerns about this approach to integration, as it shifted the whole burden of integration onto the newcomers, switched from a positive approach building on intrinsic motivation and activation to

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<sup>88</sup> EU FRA informed ECRI that 6% of immigrants and descendants of immigrants from North Africa and 4% of immigrants and descendants of immigrants from Turkey living in the Netherlands experienced hate-motivated violence – that is, one or more physical attacks – due to their ethnic or immigrant background in the five years before the survey. See in general EU FRA 2017a: 63 et seq.

<sup>89</sup> Centraal Bureau voor de Statistiek 2018.

<sup>90</sup> The Dutch authorities also categorise people originating from the Dutch Antilles (Antilleans) as migrants and deal with them in the migration statistics together with people originating from abroad. As all Antilleans are Dutch nationals since the constitutional reform of 2010, ECRI considers that this practice is no longer appropriate, even though both groups partly face similar problems, and encourages the authorities to reflect this reform in the title of their statistics.

<sup>91</sup> Significant.2018: 77.

a negative approach of punishment,<sup>92</sup> did not any more consider integration as a two-way process, reduced the integration policies to a single, general approach and abolished targeted, tailor-made integration measures for specific needs of groups such as traumatised asylum seekers, newcomers that learned to write in another script or Muslim women. During the country visit and in particular the field visit to Amsterdam, ECRI was informed about similar, strong criticism by many interlocutors. Many are of the opinion that these policies have led to increasing isolation of growing numbers of people with migration backgrounds.<sup>93</sup>

64. In an evaluation report published in 2016, the Dutch Court of Audit observed that the success rate in the civic integration exam had sharply dropped from 78% to only 39% under the new legislation;<sup>94</sup> the share of migrants taking exams at a higher level than A2 fell from 22% to 2%.<sup>95</sup> It concluded that shifting the full responsibility for integration on migrants was not appropriate and did not work in practice, as most migrants and in particular asylum seekers need support when starting an integration process. It also pointed out that there was not sufficient transparency about the courses on the market, and that the quality of the integration courses was not monitored. Many migrants did not manage to pass the test within the mandatory three-year period and it was difficult to determine whether the sanctions imposed had any effective impact; the sanctions related to the non-extension of residence permits were difficult to apply and in practice not applied. The required level of language proficiency (A2) was not always sufficient for paid work, and dual concepts interlinking language learning with professional training and insertion into the labour market were hardly stimulated.<sup>96</sup> Evaluations of the integration policies by other organisations came to similar results.<sup>97</sup>
65. The Court of Audit recommended adapting the integration process more to the needs of the target groups, providing for good conditions and personal motivation of the participants and giving municipalities a greater role in the implementation of the integration policies. Migrants should get quick access to integration measures and the authorities should check the quality of the courses against their price and remove obstacles with regard to dual pathways of integration training and labour market integration. The effectiveness of the integration process should be better measured.
66. ECRI welcomes the fact that municipalities have gone beyond these national integration policies by investing their own resources and providing intensive assistance to migrants. During its field visit to Amsterdam for example, ECRI was informed that refugees are mobilised soon after their arrival in order to help them learn Dutch quickly<sup>98</sup> and in a manner that facilitates their labour market integration; the municipality has hired one job hunter per 50 refugees, who intensely prepares them for the labour market and helps them to find jobs. Thus, out of 4 000 refugees under guidance, 500 have already found a part-time and 300 others a full-time job. For Polish migrants some municipalities have created specific information desks.<sup>99</sup> Many consider these inclusive integration policies as best practice.

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<sup>92</sup> ECRI 2013 §§ 185 et seq; see also Significant 2018: 5 et seq; approximately 1/8 of the newcomers arriving in 2013 have been fined for not having completed the integration programme and test in time.

<sup>93</sup> See in this respect also European Centre for Democracy and Development et al. 2018: 114 et seq.

<sup>94</sup> Until 1 September 2017, this share increased to 60%, Significant 2018: 5.

<sup>95</sup> The report compares the results of newcomers who became subject to the integration requirement in 2013 to the ones having started integration between 2007 and 2012 under the former system, Algemene Rekenkamer 2016: 40 et seq.

<sup>96</sup> Algemene Rekenkamer 2016: 40 et seq.

<sup>97</sup> See in particular Significant 2018.

<sup>98</sup> According to Significant 2018: 6, newcomers and in particular refugees often started only after 6 months their integration programme.

<sup>99</sup> SCP 2018c: 156.

67. In 2017, the ruling parties agreed in their coalition agreement also at federal level to reform the integration policies. In 2018, new legislation on integration was announced for 2020, which would abolish the loan system and give the local authorities an explicit mandate to co-ordinate, customise and monitor integration. Integration shall start earlier and integration programmes shall facilitate labour market integration. The authorities are also planning to focus on three specific issues: on integration of young people, on raising the language level to B1, and on developing a special programme for people who have difficulties to follow and succeed in the regular integration programme.
68. ECRI takes positive note of these reforms at local and national level that contribute to a more balanced approach where migrants and society both make substantive contributions to integration. Experience shows that this two-way approach to integration bears fruit and international standards recommend that authorities assist migrants to integrate and include into their integration policies measures aimed at mobilising the majority population for the integration process.<sup>100</sup> ECRI encourages the authorities to move further towards this two-way approach in which the whole society facilitates, supports and promotes integration, and where the intrinsic motivation of migrants<sup>101</sup> is stimulated. This approach with early investment in newcomers and children with migration background by free language tuition and free pre-school education will largely pay out, as it paves the way to sustainable labour market integration, decent living conditions and participation in society.
69. ECRI considers that these principles should not only guide the integration of newcomers, but also of first and second generation migrants and Antilleans whose sustainable integration and inclusion will be facilitated by the proactive efforts of a welcoming society. It encourages the Dutch authorities to pursue their reform process and develop an inclusive integration strategy together with an action plan for people with migration backgrounds and Antilleans, which involves the whole society in the integration process. This is all the more important as in some big agglomerations the number of people with migration background is close to that of the rest of the population (see § 60 above). To ensure efficient monitoring of its implementation, the authorities should define clear integration objectives and measures and determine indicators and targets to reach for each such objective and measure of the plan.<sup>102</sup>
70. ECRI strongly recommends that the Dutch authorities adopt an integration strategy and action plan that openly states that integration is a two-way process and contains measures to mobilise the entire society to facilitate, support and promote integration. The authorities should organise the integration process themselves by providing free language and integration courses as from the first moment, and provide for the possibility to adapt integration programmes to the individual needs and capacities of people with migration backgrounds and Antilleans. Integration indicators and targets to reach should be defined for all objectives and measures.

- **Integration results for people with a migration background and Antilleans**

71. In the field of education recent studies show progress. The number of foreign children leaving education early dropped from 22.5% in 2008 to 9.6% in 2017.<sup>103</sup> The biggest drop can be observed among girls of Turkish and Moroccan origin (26% in 2005 to 10% in 2015). The performance of primary school pupils originating from Turkey, Morocco and Surinam, and also of Antilleans in reading comprehension and arithmetic is improving and the wide gap between them and

<sup>100</sup> See ECRI GPRs 10 and 14 and the Ljubljana Guidelines on Integration of Diverse Societies, OSCE 2012.

<sup>101</sup> For this aspect regarding Syrian migrants see SCP 2018b: 220.

<sup>102</sup> See in this respect also Regioplan 2016: XXII et seq.

<sup>103</sup> Eurostat 2018a.

their native Dutch peers is gradually narrowing. The “Cito-tests” for the transition to secondary schooling<sup>104</sup> also show that pupils from these groups are catching up; primary school pupils of Moroccan background show the biggest improvement.<sup>105</sup> Pupils from these groups remain, however, overrepresented in special needs schools.<sup>106</sup> The picture of disadvantage and progress is also observed in secondary education. The situation of students from the aforementioned groups is improving, but they are still disproportionately often enrolled in the lower tracks of pre-vocational secondary education and practical training.<sup>107</sup> Also, the most recent figures show that inequality in educational opportunities is again increasing; low educational level of parents negatively impacts the educational outcomes of their children and people with migration backgrounds are disproportionately often affected by this link.<sup>108</sup>

72. ECRI welcomes this generally positive trend and encourages the authorities to take further steps to bridge the remaining gaps, in particular in the field of early childhood education.<sup>109</sup> They should in particular generate data on the preschool attendance rate of children with migration backgrounds and Antillean children; promote early enrolment of such children in preschool free of charge; early testing of their proficiency in the language of instruction; early language training to catch up before entering primary school to avoid that they pile up disadvantages as of the beginning of their schooling; continue the equal opportunities’ programme to avoid that such children are unjustifiably sent to lower strands of secondary schools; consider prolonging primary schooling and postponing the transition to secondary schooling and the related Cito-tests to a higher age; and making sure that the Cito- and other tests do not disadvantage children coming from different cultural backgrounds.
73. ECRI recommends that the Dutch authorities take appropriate measures to further reduce the gap in the educational outcomes of children with migration backgrounds and Antillean children, and focus on convincing parents of such children to enrol them in early childhood education.
74. On the labour market, the gap between people from the aforementioned groups and native Dutch peers is not narrowing: access to (permanent) work remains a key stumbling block with unemployment, including youth unemployment, almost three times as high as in the rest of the population, and the gap rises when the economy is weak. While less than half of the unemployment gap can be explained by characteristics such as educational level and average age, the remaining difference is associated amongst others with discrimination and lack of a professional network. The EU MIDIS II survey shows indeed high levels of perceived discrimination among people of Turkish and North African origin (19 respectively 20% when looking for work, and 14 respectively 13% at work).<sup>110</sup> Representatives of minority groups informed ECRI that young people have already difficulties to find internships, in particular women wearing a headscarf and young Moroccan men. A TV report based on the testing of 78 temporary work agencies showed the readiness of almost half of them to discriminate.<sup>111</sup> People from the

<sup>104</sup> So-called Cito-tests set by the National Institute for Educational Measurement (cito).

<sup>105</sup> Nederlands Jeugdinstituut 2018.

<sup>106</sup> According to information provided by the authorities, in 2014 the share of pupils of these groups of all pupils in special education was 24%, whereas it was of only 18% in primary school.

<sup>107</sup> Centraal Bureau voor de Statistiek 2016 : 9 et seq. ; SCP 2016: 282 et seq.

<sup>108</sup> Ministry of Education, Culture and Science 2018c.

<sup>109</sup> In this respect, ECRI takes positive note of the measures described in Ministry of Education, Culture and Science 2018b.

<sup>110</sup> EU FRA 2017a: 38.

<sup>111</sup> Ministerie van Sociale Zaken en Werkgelegenheid 2018: 5.

aforementioned groups also get the weakest labour contracts, often part-time and definite term contracts. In 2013, 37% had a “flexible job”, compared to 13% among the native Dutch population.<sup>112</sup>

75. ECRI is pleased to note that the authorities have reacted to this situation by adopting several action plans that focus on labour market discrimination in general (2014 and 2018) and on discrimination in connection with pregnancy (2017). The 2018 action plan focuses on (i) supervision and enforcement in particular by the labour inspectorates; (ii) research, in particular with regard to selection procedures and recruitment; and (iii) information and awareness raising. This last strand comprises among others the Diversity Charter project, which was established in 2015 and through which 126 companies and organisations have committed to promoting diversity and inclusion in the workplace. Many authorities including ministries have also adopted diversity charters, through which they intend to become more diverse and hire people from different backgrounds. In addition, innovative approaches for labour market integration will be tested over the next four years in the framework of the recent Programme for Further Integration on the Labour Market; this programme focuses on groups of long-term jobseekers such as refugees originating from certain countries.
76. ECRI considers that the promotion of equality, awareness raising and positive measures are efficient tools to generate intrinsic and extrinsic motivation to promote equality and address discrimination in the labour market. Times of low unemployment such as the present are windows of opportunity to convince more businesses to join the Diversity Charter<sup>113</sup> and the Declaration of Amsterdam for an LGBT Inclusive Workplace,<sup>114</sup> to further develop their recruitment procedures and internal culture to be able to fill vacancies with people with migration background and Antilleans, and to develop a working atmosphere that is sustainably inclusive for people from all backgrounds. In this context, the authorities should consider granting incentives to employers that embrace good practice, such as for example awards or tax reductions. Authorities should also serve as an example and quickly implement the actions compiled in their own diversity charters. At the same time, equality bodies, labour inspectorates and other actors should take up a number of cases of labour market discrimination for strategic litigation in order to raise the awareness of employers about the legislation in place and increase motivation and pressure to respect them.
77. ECRI recommends that the authorities insert for all objectives and measures of the Action Plan against Labour Market Discrimination indicators and measurable targets to reach. Within this plan, they should continue focusing on access to the labour market, ensure that non-discriminatory recruitment procedures are developed and implemented, and extend the competences of the labour inspectorates to the field of recruitment.

- **Integration measures for Roma<sup>115</sup>**

78. The Council of Europe average estimate of the number of Roma in the Netherlands is of 40 000.<sup>116</sup> There is only very limited quantitative data on the social and economic situation of Roma. The biennial Roma integration monitors compile and rely on qualitative data. The Netherlands have not adopted a separate Roma integration strategy, but have pursued an integrated set of policy measures for

<sup>112</sup> Centraal Bureau voor de Statistiek 2016 : 11 et seq. ; according to SCP 2018c : 151, this figure was 42% for Polish migrants. For the whole paragraph see SCP 2016: 286 et seq.

<sup>113</sup> <https://diversiteitinbedrijf.nl/>, accessed on 04.12.2018.

<sup>114</sup> <https://workplacepride.org/download/declaration-of-amsterdam/>, accessed on 04.12.2018.

<sup>115</sup> In the present report, the term “Roma” includes not only Roma but also Sinti, Kali, Ashkali, “Egyptians”, Manouche and kindred population groups in Europe, together with Travellers, so as to embrace the great diversity of the groups concerned.

<sup>116</sup> Council of Europe, Special Representative of the Secretary General for Roma issues 2018.

Roma within the Netherlands' generic social inclusion policies. In recent years, these policies focused on tackling early school drop-out, forced marriages, discrimination, strengthening dialogue and development of knowledge. From 2011 to 2016 the programme "Tackling of Exploitation of Roma Children" was rolled out and until 2015 municipalities and other authorities focused on developing a "chain approach" by which many services continue to develop co-ordinated activities with regard to Roma.

79. With regard to the educational situation of Roma experts conclude that they lag behind the general population. Enrolment in preschool is comparatively low and Roma children often enter primary school with a language and learning deficit, as they do not speak Dutch at home. The percentage of Roma children in special needs schools at primary school level was three times the national average. In primary and secondary education absenteeism and drop-out are significant problems. Girls are often not enrolled in secondary education and Roma are likely to enrol in vocational training. These problems result in low employment rates, poverty and social exclusion.<sup>117</sup> According to the Roma inclusion monitors from 2013, 2015 and 2017, the main problems remain unchanged and only a slightly positive development can be observed.<sup>118</sup>
80. Given this persistence of unsatisfactory results, ECRI considers that the authorities should develop a specific programme for the integration of Roma with tailor-made measures to address the multiple difficulties that negatively impact the schooling of Roma children<sup>119</sup> and subsequently their employment. As the latest Roma monitor points out, generating confidence between Roma and the authorities is of utmost importance.<sup>120</sup> An approach that has proven efficient in this field is the recruitment of mediators among Roma who work with parents, children and institutions to overcome these hurdles to sustainable improvement of the educational outcomes of the next generation of Roma, which is key for overcoming Roma exclusion.
81. Another topic of concern is the provision of sufficient caravan sites. With a guide to municipalities published by the government in 2006, the so-called "phasing-out policy" started, whereby municipalities significantly reduced the number of caravan sites. This increased the shortage of such sites, which was estimated at 3 000 places in 2012. Starting in 2014, the NIHR decided that 20 municipalities and housing companies had violated the right to equality by implementing this policy. In 2017, the Council of State held that municipalities were not allowed to amend zoning plans for caravan sites without substantiating a lack of demand for such sites. In 2017, the National Ombudsman issued a report in which it stated that the state and the municipalities do not sufficiently recognise and facilitate the right of caravan residents to live according to their cultural identity.
82. In this regard, ECRI refers to § 6k of its GPR No. 13 on Combating anti-gypsyism and discrimination against Roma, according to which the authorities should ensure that appropriate encampment areas, whether for permanent occupation or transit, are available in sufficient numbers on suitable and duly serviced sites. It is satisfied to note that the authorities are in the process of abolishing this "phasing-out policy", that they are mapping the housing needs of Roma and that they issued a new policy framework for the municipal caravan and parking policy that clearly states that a reduction of the number of caravan sites is in general not allowed and that Roma wishing to obtain a caravan site need to be provided with it within a

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<sup>117</sup> FRA, FRANET, Art.1 - Dutch knowledge centre on discrimination 2012: 3 et seq.

<sup>118</sup> Movisie 2013 : 7 et seq.; Erasmus Universiteit Rotterdam, Risbo 2015: 17 et seq. ; 2017: 1.

<sup>119</sup> For more details see the studies cited in the two previous footnotes.

<sup>120</sup> Erasmus Universiteit Rotterdam, Risbo 2017: 12.

reasonable period.<sup>121</sup> ECRI encourages the national and local authorities to ensure effective implementation of this new policy.

83. As already stated in ECRI's last report, it is estimated that about 1 000 Roma residing in the Netherlands are stateless. According to the authorities, they benefit from permanent residence permits. Under Dutch law, statelessness of parents leads to statelessness of children<sup>122</sup> and, according to the authorities, "lack of integration" and of resources to pay for the naturalisation procedure are problems. The resulting lack of status makes stateless Roma vulnerable to eviction and exploitation, impacts on the school careers of their children, and makes it difficult to access health services and to find legal employment.<sup>123</sup> ECRI takes positive note of the draft law on determination of statelessness, which could further help stateless Roma – and also migrants that are *de facto* stateless - to regularise their status. Roma mediators (see § 80) could also help diminishing the number of stateless Roma.
84. ECRI recommends that the Dutch authorities develop a specific programme for the integration of Roma with tailor-made measures to increase pre-school attendance, improve educational outcomes, ensure implementation of the new policy on caravan sites and eliminate statelessness. In this context, the authorities should consider appointing Roma mediators.

## **II. Topics specific to the Netherlands**

### **1. Interim follow-up recommendations of the fourth cycle**

85. The first interim follow-up recommendation that ECRI addressed to the Dutch authorities in its fourth report was to introduce a provision to the effect that racist motivation constitutes a specific aggravating circumstance in sentencing. This recommendation has been studied in § 6 of the report.
86. The second interim follow-up recommendation was that the authorities develop a national strategy and policy against racism and racial discrimination which tackles at the national level certain issues and, more generally, sets out objectives, mechanisms for implementation, monitoring and evaluation. Within its interim follow-up procedure, ECRI concluded in 2016 that this recommendation had been partly implemented. In January 2016, the Dutch authorities adopted a new National Anti-Discrimination Programme that puts increasing focus on racism and racist discrimination, which are also the grounds on which the biggest numbers of discrimination complaints are registered (see § 23 above). The programme contains policy measures at national and local level for specific groups affected by discrimination on the grounds of origin, skin colour and religion and the government recently transmitted to the parliament information about the implementation status of these measures.<sup>124</sup> Given these developments, ECRI now considers that this recommendation has been fully implemented and encourages the authorities to use their system of integration indicators to further improve the monitoring and evaluation of the programme.
87. The third interim follow-up recommendation was that the Dutch authorities address any exploitation of temporary agency workers who are not permanently resident in the Netherlands by: setting up, if need be, a system of licences for temporary employment agencies; regularly inspecting the same, and ensuring that the above-mentioned category of workers benefit from the safeguards and work conditions provided for under the law. The authorities informed ECRI that a new Law on Working Conditions for Posted Workers in the European Union entered into force

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<sup>121</sup> Ministry of the Interior 2018c: 7 et seq.; International Commission of Jurists (NJCM) 2018.

<sup>122</sup> FRA, FRANET, Art.1 - Dutch knowledge centre on discrimination 2012: 4 et seq.

<sup>123</sup> See in this respect Erasmus Universiteit Rotterdam, Risbo 2015: 25 et seq.

<sup>124</sup> MIKR 2018a with Appendices I and II.

on 18 June 2016 that regulates the employment conditions of temporary agency workers and introduced various obligations for employers. Per year, about 500 temporary employment agencies lose the private quality label that is attributed by two foundations. The Inspectorate of the Ministry of Social Affairs and Employment (SZW) stated in its 2017 annual report that the serious violations had stopped that had been observed in earlier years in this sector. Numerous agencies and managers breaching labour legislation had received high fines for serious violations, ceased their activities or gone bankrupt. The number of agencies breaching labour legislation has decreased and agencies are more afraid of being caught when violating the law. In addition, a checklist and a self-evaluation tool have been developed and help agencies to comply with the regulation in place.<sup>125</sup> A 2018 study on the situation of recent Polish migrants confirms that improvements have been made through this new legislation, the controls and the certification. While some forms of abuse diminish, some unscrupulous employment agencies are still operating, unlawful deductions from the minimum wage are still being made and new ways to circumvent the law are continuously being devised.<sup>126</sup>

88. ECRI considers that the above-mentioned measures and in particular the high fines for serious violations have proven to be an efficient means of removing exploiting agencies from the market. ECRI therefore considers that this recommendation has now been fully implemented. At the same time, it encourages the SZW and other competent authorities to use the new tools to address the remaining exploitation of temporary agency workers.

## **2. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>127</sup>**

89. According to official documents, about 4 to 6% of the Dutch population is LGBT.<sup>128</sup> In 2017, 755 (in 2016: 771) lesbian and 620 (in 2015: 665) gay marriages were registered in the Netherlands. In 2017, 356 (in 2016: 330) lesbian and 316 (in 2016: 286) gay couples entered into a registered partnership.<sup>129</sup> Between 1995 and 2015, 1 960 citizens changed their legal gender in the civil registry; the numbers increased substantially after the enactment of the 2014 transgender law (see § 92 below).<sup>130</sup>
90. ECRI welcomes the detailed studies that have recently been published about the situation of LGBT persons. According to a 2016 study on LGBT persons, the percentage of Dutch citizens with a positive attitude towards homosexuality and bisexuality rose from 53% in 2006 to 74% in 2017. However, negative views remain on some topics such as visible intimacy among homosexual persons, gender-ambiguous behaviour of transgender persons or equal rights with regard to adoption.<sup>131</sup> While tolerance is less pronounced among groups such as older people, men, lower-educated people, religious persons, residents of rural areas and some migrant groups, these differences have also narrowed over recent years. According to the study, lesbian and bisexual women more often smoke; gay and bisexual men more often consume excessive amounts of alcohol; and gay and bisexual men participate less in club-based sport. Young LGB persons reported high levels of mental health problems. At the workplace, bisexual employees

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<sup>125</sup> Ministerie van Sociale Zaken en Werkgelegenheid, Inspectie SZW 2018: 39 et seq.

<sup>126</sup> For details see SCP 2018c: 139 et seq. See also DutchNews.nl 2018a.

<sup>127</sup> For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

<sup>128</sup> SCP 2016b: 42; Government 2018b: 3. Out of a total of 17 million, that represents a community of 680 000 to 1 million persons. The number of transgender persons is estimated at 48 000 and that of intersex persons at 80 000, Government 2018b: 3. Cf. also Dalia Research 2016.

<sup>129</sup> CBS 2018b.

<sup>130</sup> The numbers sharply increased in 2015, SCP 2017: 6; Van der Brink 2017.

<sup>131</sup> 29% consider two men kissing to be abhorrent, 20% have negative views about gender ambivalence and 13% do not support equal adoption rights, SCP 2018d: 2 et seq.



encounter more conflicts and harassment, suffer from more burnout symptoms, are less satisfied with their work and have higher absenteeism rates than the general population. The perceived and actual safety of LGB persons, especially lesbian and gay persons is lower than that of heterosexuals.<sup>132</sup>

91. Transgender persons live, according to a 2017 study, more often as singles in a one-person household in an urban area, are less likely to be employed and quite often have a low income; these tendencies are more pronounced for transgender women. Transgender persons report high levels of insecurity, negative treatment, loneliness, psychological problems and suicidal tendencies. The study lists as underlying risk factors legislation, policy, population views, lack of contact with transgender organisations, personal experience of negative treatment, not knowing other transgender persons and low general resilience (capacity to deal with problems).<sup>133</sup> Both studies recommend including a question on sexual orientation and gender identity in Dutch large-scale population studies. To improve the situation of transgender persons, civil society suggests introducing a third gender,<sup>134</sup> abolishing unnecessary gender registration, reducing long waiting lists for gender reassignment treatment and introducing a “transition leave” for transgender persons on the model of the “pregnancy leave”.
92. ECRI is pleased to note that the Netherlands granted legal recognition to same-sex partnerships in 1998 and in 2001 became the first country in the world to legalise same-sex marriages. Joint adoption and adoption of a stepchild were authorised at the same time and lesbian couples have access to in vitro fertilisation treatment. In 1985, transgender persons were granted the right to change their legal gender; since the enactment of the Transgender Act (TA) in July 2014, they can change their gender and name on the basis of an expert declaration affirming the person’s persistence in their wish to belong to the other gender, without undergoing sterilisation or sex reassignment surgery.<sup>135</sup> The authorities have published a study that focuses on the current minimum age limit of 16 years in the TA and the need to present expert evidence for changing the first name and gender.<sup>136</sup> ECRI encourages the authorities to quickly move forward with the evaluation and revision of the TA, to further lower the conditions for changing name and gender, and to take in this respect inspiration from international standards and progressive legislation, which has been adopted recently in some other Council of Europe member states.
93. ECRI recommends that the Dutch authorities adopt new legislation on name changes and gender recognition for transgender persons, drawing inspiration from international recommendations such as Resolution 2048 (2015) of the Council of Europe Parliamentary Assembly.
94. In addition, ECRI refers back to the recommendations already made in §§ 7 and 16 to include the ground of gender identity explicitly in all parts of the hate crime and anti-discrimination legislation.
95. In March 2018, the government adopted an emancipation memorandum<sup>137</sup> which contains 26 measures for the emancipation and promotion of social security and acceptance of LGBTI people. Among the focus areas are the representation of LGBTI persons in the media, making room for gender diversity for children and

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<sup>132</sup> SCP 2016b: 2; 2018d: 2.

<sup>133</sup> SCP 2017: 6 et seq.

<sup>134</sup> According to the authorities, there are a number of intersex persons having in their passport an “X” as gender marker, In October, for the first time a court decided to grant someone a gender-neutral passport, BBC news 2018.

<sup>135</sup> Danish Institute for Human Rights COWI 2009: 6 et seq.

<sup>136</sup> Van der Brink 2017.

<sup>137</sup> Ministry of Education, Culture and Science 2018a.

young people and strengthening equal treatment. Each year, a progress report will be addressed to the parliament. ECRI is pleased to note that among the concrete measures taken are those to analyse how the government communicates about LGBTI persons with a view to setting a good example and to discuss stereotyping in text books and other educational material. Municipalities and provinces also increasingly pursue active LGBTI policies; on 12 October 2018, 53 Dutch cities and the Minister of Education, Culture and Science signed a declaration of intent to further promote the safety and social acceptance and build the resilience of their LGBTI inhabitants.

96. As young LGBTI persons become aware of their sexual orientation and gender identity at an early age,<sup>138</sup> schooling and assistance to young LGBTI deserve particular attention. Results of the 2012 FRA survey indicate that many Dutch LGBT pupils still do not feel safe and comfortable speaking about their sexual orientation and gender identity: 70% never spoke openly about their LGBT identity at school and 61% always hid or disguised it. Another survey reveals that LGBT pupils are significantly more often victims of bullying than others; 12% of lesbian girls for example responded in 2016 that they had been victims of bullying (compared to 8% among the reference group) and 41% of “verbal violence” (compared to 21%).<sup>139</sup> However, according to the FRA survey, only 8% felt discriminated against by school or university personnel, which indicates that teachers are open towards the issues of sexual orientation and gender identity.<sup>140</sup> This potential could be more actively used to make young LGBTI feel comfortable at school, and to help them cope with their coming out during the difficult phase of puberty. Teaching and discussing LGBTI issues is also decisive for developing a better understanding of sexual diversity among heterosexuals, and helping them to accept and become comfortable in interacting with LGBTI people.
97. ECRI recommends that the Dutch authorities implement measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. These measures should provide LGBTI pupils with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.

### 3. Conduct of police services

98. In its fourth report, ECRI recommended to the Dutch authorities that the police receive training on the issue of racial profiling, that they register every stop and preventive body search, and that any new law concerning police searches provides clear guidelines as concerns the modalities, the place, the duration of such measures and the need to avoid racial profiling.
99. According to the 2017 MIDIS II survey, in the Netherlands 43% of the respondents with Turkish background and 61% of the respondents of North African background perceived the most recent police stop as ethnic profiling (EU averages for these groups: 17% and 38%). Forty-three per cent of them and one third of the respondents of Turkish background were of the opinion that they had been treated disrespectfully. Only a small proportion of these persons made a complaint;<sup>141</sup> the Dutch police received 42 such complaints in 2017. In practice, such proactive stops often involve a humiliating arrest on the street or in another public place, body searches and other time-consuming controls.<sup>142</sup>
100. Against this background ECRI is satisfied to note that the authorities have, as recommended in § 2 of ECRI's GPR No. 11, themselves commissioned a detailed

<sup>138</sup> See e.g. Van der Brink: 4; COC 2017: 13 et seq.

<sup>139</sup> Scholte R., Nelen W. et al. 2016: 81 et seq.

<sup>140</sup> EU FRA 2012 ; concerning bullying against LGBT see also Scholte R., Nelen W. et al. 2016: 13 et seq.

<sup>141</sup> EU FRA 2017a: 72 et seq. See also SCP 2014.

<sup>142</sup> For the description of concrete cases see Open Society Justice Initiative and AI 2013.

study on racial profiling, which concludes that people belonging to minorities were disproportionately often subject to proactive investigatory stops. Forty per cent of such stops could not be objectively and reasonably justified, there was some sort of return only in 33% of the cases and only 9% of the stops led to a provisional arrest. According to the study, police agents overestimated the effectiveness of proactive controls and of their intuition, on which they often based the decision to carry out such stops. Many police officers were also not or barely aware of the impact of such controls on citizens and on the relationship between the groups of citizens concerned and the police.<sup>143</sup>

101. The authorities acknowledged the problems highlighted by these and other studies<sup>144</sup> and informed ECRI that in 2016 the police made it easier to submit a complaint through their mobile application called “MEOS”. Complaints officers and co-ordinators were trained and in 2017 the police started a large-scale pilot project with independent mediators to deal with complaints about ethnic profiling; this project will be evaluated by the Ombud. In 2017, the police finalised a new Operational Framework for Carrying out Proactive Controls to ensure that such controls are carried out in a more conscious and careful way. Police officers deciding on controls will also be able to access more targeted information about the person or vehicle in question via the aforementioned mobile application. The new framework, which states that controls must always be based on objectifiable grounds,<sup>145</sup> was tested in 2018 in a pilot project covering ten police teams and monitored by the Police Academy. All other police units were informed about the new operational framework.
102. While ECRI takes positive note of these developments, it regrets that it would seem that not even data on the justification of stops and controls is systematically collected within the pilot project; thus, it will not be possible to monitor the real impact of the measures taken so far. Furthermore, ECRI considers that the Operational Framework is too vague to guide police agents when using their wide-ranging control competencies, which are for example in the field of traffic controls not subject to any legal restriction. ECRI first of all recalls the recommendation in § 3 of its GPR No. 11, according to which national authorities should introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria.<sup>146</sup> As long as such a reasonable suspicion standard is not introduced, the police should at least define and describe in detail the objectifiable grounds that would allow a control even in the absence of any suspicion. Another way of preventing racial profiling is to introduce stop and control forms, in which police agents register every such control together with the reasons and objectifiable grounds for its execution, the outcome and the relevant personal data of the person. Such measures should be tested by all police services, including the Royal Netherlands Marechaussee in pilot projects covering neighbourhoods with a high number of “proactive controls”.
103. ECRI recommends that the Dutch authorities (i) introduce by law or binding regulation a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria, (ii) define and describe in detail the conditions under which such measures are permitted (iii) systematically collect

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<sup>143</sup> Landman, W. and Kleijer-Kool, L. 2016: 203 et seq. Concerning the effects of such controls see Open Society Justice Initiative and AI 2013.

<sup>144</sup> See MIKR 2016b.

<sup>145</sup> Politie 2017a.

<sup>146</sup> See in this respect the case law of the ECHR on Articles 5 (Right to liberty and security), 8 (Right to private life), 14 (Prohibition of discrimination) of the ECHR and Article 2 of Protocol No.4 to the ECHR (Freedom of movement), ECHR 2018, in particular §§ 12 and 81 et seq.

data on stop and control measures at least within pilot projects, (iv) test the use of stop and control forms in pilot projects and (v) address racial profiling in initial and further training.

104. ECRI was informed about a case in which two police agents received conditional prison sentences of six months for ill-treatment resulting in the death of a man with Antillean background. According to the appealed first instance judgment they had used excessive force when arresting the man on 27 June 2015 in The Hague.<sup>147</sup> The case provoked heavy protests that lasted for several days and the authorities commissioned a study on the use of the choke hold that had been applied during the arrest.<sup>148</sup> ECRI is satisfied to note that in reaction to this study the police decided to use less dangerous holding and intervention techniques, and established a national training framework for fixing, controlling and cuffing people. The police will also harmonise registration of the use of force throughout the country and publish this data.<sup>149</sup> ECRI encourages the different Dutch police services to closely monitor, based on this data, the use of force against people belonging to minorities and to ensure by initial and ongoing training and other appropriate measures that its use is further reduced.

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<sup>147</sup> Rechtbank Den Haag ECLI:NL:RBDHA:2017:15095.

<sup>148</sup> Ministry of Justice and Security, Inspectie Veiligheid en Justitie 2016.

<sup>149</sup> Ministry of Justice and Security 2018c.

## INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of the Netherlands are the following:

- ECRI recommends that the Dutch authorities adopt an integration strategy and action plan that openly states that integration is a two-way process and contains measures to mobilise the entire society to facilitate, support and promote integration. The authorities should organise the integration process themselves by providing free language and integration courses as from the first moment, and provide for the possibility to adapt integration programmes to the individual needs and capacities of people with migration backgrounds and Antilleans. Integration indicators and targets to reach should be defined for all objectives and measures.
- ECRI recommends that the authorities insert for all objectives and measures of the Action Plan against Labour Market Discrimination indicators and measurable targets to reach. Within this plan, they should continue focusing on access to the labour market, ensure that non-discriminatory recruitment procedures are developed and implemented, and extend the competences of the labour inspectorates to the field of recruitment.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 7) ECRI recommends that the Dutch authorities bring their criminal legislation fully into line with its General Policy Recommendation No. 7 and, in particular, (i) explicitly incorporate the grounds of colour, language, citizenship, national or ethnic origin and gender identity in all provisions of the Criminal Code that are aimed at combating racism and intolerance, (ii) explicitly criminalise public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, (iii) make sure that the law provides for effective, proportionate and dissuasive sanctions for racist, homo- and transphobic offences and (iv) provide explicitly in the Criminal Code that racist, homo- and transphobic motivation constitutes an aggravating circumstance for any ordinary offence.
2. (§ 16) ECRI recommends that the Dutch authorities generally align their anti-discrimination legislation with its General Policy Recommendation No. 7 and, in particular, (i) align the list of prohibited discrimination grounds with that in Protocol No. 12 to the European Convention on Human Rights, (ii) extend the scope of application of the General Equal Treatment Act to the whole of the public and private sectors, (iii) introduce a legal provision placing public authorities under a positive duty to promote equality and to prevent discrimination and (iv) evaluate whether Dutch anti-discrimination legislation provides for effective, proportionate and dissuasive sanctions.
3. (§ 22) ECRI recommends that the Dutch authorities ensure that all local Anti-Discrimination Bureaus become fully independent, and that they are merged at regional level or establish strong regional co-operation. The authorities should assign all competences to promote equality and prevent discrimination listed in § 13 of its General Policy Recommendation No. 2 either to the equality bodies at national or regional/local level, and provide them with the necessary resources.
4. (§ 41) ECRI recommends that the Dutch parliament and government develop and adopt codes of conduct that prohibit hate speech and provide for suspension and other sanctions for breach of their provisions.
5. (§ 44) ECRI recommends that the authorities initiate, without encroaching on media independence, a process in which media and their representative organisations develop an action plan to tackle routines and reflexes that have stigmatising effects on groups such as Muslims, Black people and Roma and to ensure balanced reporting on issues relating to such groups.
6. (§ 46) ECRI recommends that the authorities build up awareness among internet users about the prohibition of hate speech, continue motivating internet companies to enforce the existing codes of conduct, and task and fund an organisation to monitor proactively the internet for hate speech.
7. (§ 51) ECRI recommends that the prosecutors and police officers specialising in hate speech and hate crime reach out more intensely to people belonging to minorities, build up confidence through a sustainable dialogue, and encourage people and groups exposed to hate speech to report hate speech cases to the competent institutions (§§ 13 and 18 of ECRI's General Policy Recommendation No. 11).
8. (§ 54) ECRI recommends that the Dutch authorities continue prosecuting hate speech in football stadiums and thus ensure respect and knowledge of the hate speech legislation. The authorities should also support the dialogue between relevant football clubs and civil society with a view to reliably prevent racist and in particular antisemitic chants and behaviour.

9. (§ 70) ECRI strongly recommends that the Dutch authorities adopt an integration strategy and action plan that openly states that integration is a two-way process and contains measures to mobilise the entire society to facilitate, support and promote integration. The authorities should organise the integration process themselves by providing free language and integration courses as from the first moment, and provide for the possibility to adapt integration programmes to the individual needs and capacities of people with migration backgrounds and Antilleans. Integration indicators and targets to reach should be defined for all objectives and measures.
10. (§ 73) ECRI recommends that the Dutch authorities take appropriate measures to further reduce the gap in the educational outcomes of children with migration backgrounds and Antillean children, and focus on convincing parents of such children to enrol them in early childhood education.
11. (§ 77) ECRI recommends that the authorities insert for all objectives and measures of the Action Plan against Labour Market Discrimination indicators and measurable targets to reach. Within this plan, they should continue focusing on access to the labour market, ensure that non-discriminatory recruitment procedures are developed and implemented, and extend the competences of the labour inspectorates to the field of recruitment.
12. (§ 84) ECRI recommends that the Dutch authorities develop a specific programme for the integration of Roma with tailor-made measures to increase pre-school attendance, improve educational outcomes, ensure implementation of the new policy on caravan sites and eliminate statelessness. In this context, the authorities should consider appointing Roma mediators.
13. (§ 93) ECRI recommends that the Dutch authorities adopt new legislation on name changes and gender recognition for transgender persons, drawing inspiration from international recommendations such as Resolution 2048 (2015) of the Council of Europe Parliamentary Assembly.
14. (§ 97) ECRI recommends that the Dutch authorities implement measures to promote mutual tolerance and respect in schools regardless of sexual orientation and gender identity. These measures should provide LGBTI pupils with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity.
15. (§ 103) ECRI recommends that the Dutch authorities (i) introduce by law or binding regulation a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria, (ii) define and describe in detail the conditions under which such measures are permitted (iii) systematically collect data on stop and control measures at least within pilot projects, (iv) test the use of stop and control forms in pilot projects and (v) address racial profiling in initial and further training.



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